

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON

**FILED**

March 1, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

RONALD C. TILLMAN,	)	
	)	
Plaintiff/Appellee	)	MADISON CHANCERY
	)	
v.	)	NO. 02S01-9803-CH-00026
	)	
MADISON COUNTY SHERIFF'S	)	HON. JOE C. MORRIS,
DEPARTMENT,	)	CHANCELLOR
	)	
Defendant/Appellant	)	

**For the Appellant:**

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**For the Appellee:**

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**MEMORANDUM OPINION**

**Members of Panel:**

Justice Janice Holder  
Senior Judge John K. Byers  
Special Judge F. Lloyd Tatum

REVERSED

BYERS, Senior Judge

## OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court found the plaintiff, a police officer, had suffered a heart attack during the course of making an arrest of a large, strong man who resisted the plaintiff and other officers when he was being taken into custody. The trial judge found the plaintiff had suffered a 45 percent permanent partial vocational disability.

We find the evidence does not support the finding that the plaintiff suffered a heart attack and reverse the judgment.

First, we note that this case is not based upon Tenn. Code Ann. § 7-51-201(a)(1) because counsel for the plaintiff at the commencement of trial argued to the court that the case did not involve the presumption created by that statute. Therefore, the trial judge held it was not necessary to address the presumption.<sup>1</sup>

At the time of trial, the plaintiff was age 51 and a high school graduate. He had previously worked in plants in the area in which he lived. In 1987, the plaintiff began work for the Madison County Sheriff's Department. His primary duty was as a jailor.

On August 26, 1996, the plaintiff was called to the local courthouse because of a disturbance being created by a man. The plaintiff began to talk to the man, whom he described as being very irate and having the appearance of being under

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<sup>1</sup> If we were to address the presumption, we would be compelled to hold that it had been rebutted under the holdings of the Supreme Court in *Benton v. City of Springfield*, 973 S.W.2d 936 (Tenn. 1998) and *Krick v. City of Lawrenceburg*, 945 S.W.2d 709 (Tenn. 1997), because the two treating physicians testified the plaintiff's work as a police officer did not cause his underlying coronary artery disease.

the influence of something. Other officers came to assist the plaintiff, and he, along with the other officers, set about to physically subdue the man. The plaintiff testified this man was very strong and it required a considerable amount of exertion to arrest him.

The plaintiff testified he began to suffer chest pains during this fracas. The plaintiff returned to his office but continued to suffer heart pain and went to his home. The plaintiff then went to a local hospital for care. He testified the pain lasted approximately one hour and 15 minutes.

The plaintiff was treated by a cardiologist in the Jackson Hospital Emergency Room and then by Dr. Tony Phillips, a cardiologist who took over his care. Ultimately, Dr. Allen Spalding performed coronary by-pass surgery on the plaintiff.

Although we do not think in the context of this case, for purposes of determining the issue raised, the plaintiff's past history is that significant, we note that the plaintiff has a history of heart problems dating back to 1988 and that he was treated by angioplasty in October 1994 and again in November 1995. The plaintiff began to have some symptoms six weeks prior to the August 26, 1996 event and had made an appointment to see Dr. Phillips on August 26, 1996, the day of the event in this case.

The medical evidence in this case consists of three medical depositions and various medical records of Dr. Phillips and Dr. Spalding. The medical depositions were from Dr. Spalding, a cardiologist who did the coronary by-pass surgery, and Dr. Phillips, who treated the plaintiff. These witnesses were presented by the defendant. The plaintiff presented the deposition testimony of Dr. Pervis Milnor, Jr., a clinical professor of medicine at the University of Tennessee College of Medicine, who did not see the plaintiff but received the medical records from the other doctors.

The unanimous view of each of the physicians was that the plaintiff had experienced an attack of angina in the course of the struggle with the man who was being arrested. There is a divergence between Dr. Milnor and the other physicians as to the nature of the attack and whether the plaintiff sustained any permanent damage as a result of the occurrence.

Dr. Milnor was of the opinion that the plaintiff had suffered more than the normal angina attack because the pain was longer in duration than is normal for an

attack of angina. Dr. Milnor described the plaintiff's occurrence as being an intermediate coronary syndrome, which he appears to consider a heart attack. Further, Dr. Milnor said any time a person has an angina attack there would be a loss of heart tissue. It appears Dr. Milnor determined the plaintiff had a heart attack because he lost heart tissue as a result of this episode. However, Dr. Milnor testified the loss of tissue by the plaintiff was not documented and was established "inferentially."

In arriving at a finding of disability of the plaintiff, Dr. Milnor placed him in the class II category for evaluation of the plaintiff's heart condition under the *AMA Guidelines*, which he testified is a disability range from 10 to 29 percent. Dr. Milnor was of the opinion that the plaintiff had underlying coronary artery disease, which was caused by the stress of being a police officer, and that the event of August 26, 1996 caused the angina attack.

Dr. Spalding did not testify to any disability of the plaintiff as a result of the August 26, 1996 episode. Dr. Phillips testified he was of the opinion that the plaintiff's underlying coronary artery disease was not caused by the plaintiff's work as a police officer. He testified the angina attack, which is the result of insufficient blood flow to the heart in times of exertion, was caused by the exertion expended by the plaintiff in trying to subdue the man who was arrested. Dr. Phillips did not fix any disability as a result of the occurrence.

The plaintiff asserts that Dr. Phillips testified the plaintiff suffered the death of heart tissue as a result of this episode. We are unable to find this in Dr. Phillips' testimony.

The trial judge may accept the opinion of one medical expert over that of another medical expert. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333 (Tenn. 1996). The trial judge in this case accepted the testimony of Dr. Milnor over the testimony of Dr. Spalding and Dr. Phillips.

When the medical testimony is based upon deposition, as it was in this case, the panel is able to make an independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446 (Tenn. 1994).

Dr. Milnor did not see the plaintiff in this case and his testimony and conclusions were based upon the records of other physicians. We view his testimony as being based to a large extent on an assertion that the plaintiff had suffered the loss of heart tissue in the episode. Dr. Milnor testified the loss of tissue was not documented by the tests shown in the medical records but that the loss was, in his words, “inferentially” established.

The plaintiff testified about the event and his problems. However, his testimony does not show any disability arising from the event. The plaintiff was at the time of this trial, and so far as we know, still employed in the sheriff’s office though he works at a less stressful level than before.

We find the evidence preponderates against the finding of the trial judge that the plaintiff suffered permanent damage in this case. We reverse the judgment and dismiss the case.

The cost of this appeal is taxed to the plaintiff.

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John K. Byers, Senior Judge

CONCUR:

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Janice Holder, Justice

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F. Lloyd Tatum, Special Judge

